

U.S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 62

[OAR-2004-0007; FRL-7786-8]

RIN 2060-AM11

**Emission Guidelines and Compliance Times for Large
Municipal Waste Combustors That are Constructed on or
Before September 20, 1994 and Federal Plan Requirements
for Large Municipal Waste Combustors Constructed on or
Before September 20, 1994**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: We are amending the large municipal waste combustor (MWC) emission guidelines to add a carbon monoxide (CO) emission limit for one type of MWC technology that was not previously addressed. When the large MWC emission guidelines were developed, all existing MWC units using the fluidized bed, mixed fuel (wood/refuse-derived fuel) technology were judged to be small MWC units, i.e., having a design combustion capacity of 35 to 250 tons per day (tpd) of municipal solid waste (MSW). Two existing MWC units have since been determined to be large MWC units, i.e., having a design combustion capacity greater than 250 tpd MSW, and thus subject to the large MWC emission guidelines. The direct final rule amends the emission guidelines to add a

CO emission limit specific to this technology. The direct final rule also amends the large MWC Federal plan, which implements the emission guidelines. The CO emission limit being added of 200 parts per million (ppm) by dry volume (24-hour geometric mean) for fluidized bed, mixed fuel (wood/refuse-derived fuel) type MWC unit is the same CO limit used for this technology in the emission guidelines for small MWC units. Low CO levels indicate good combustion, and thus, good control of other pollutants. Good combustion combined with air pollution control devices significantly reduces the release of air pollutants to the environment.

DATES: The direct final rule is effective [INSERT THE DATE 60 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE IN THE FEDERAL REGISTER] unless significant material adverse comments are received by [INSERT THE DATE 30 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE IN THE FEDERAL REGISTER]. If we receive significant material adverse comments, we will publish a timely withdrawal of the direct final rule in the Federal Register.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR-2004-0007. All documents in the docket are listed in the EDOCKET index at

www.epa.gov/edocket. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson, Combustion Group, Emission Standards Division (C439-01), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5264, e-mail stevenson.walt@epa.gov.

SUPPLEMENTARY INFORMATION: A companion proposal to the direct final rule is being published in today's Federal Register and is identical to the direct final rule. Any comments on the amendments should address the proposal.

If significant material adverse comments are received by the date specified in the proposed amendments, the direct final rule will be withdrawn and the comments on the proposed amendments will be addressed by EPA in a subsequent final rule. If no significant material adverse comments are received on any provision of the direct final rule, then no further action will be taken on the companion proposal and the amendments will become effective [INSERT THE DATE 60 DAYS AFTER PUBLICATION OF THE DIRECT FINAL RULE IN THE FEDERAL REGISTER]

Regulated Entities. Categories and entities potentially regulated by the direct final rule are existing MWC units with a design combustion capacity of greater than 250 tpd of MSW. The MWC emission guidelines and the MWC Federal plan affect the following categories of sources:

Category	NAICS Code	SIC Code	Examples of potentially regulated entities
Industry, Federal government, and State/local/tri bal governments	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal solid waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal solid waste) and do not recover energy from the waste.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the direct final rule. To determine whether your facility is regulated by the direct final rule, you should examine the applicability criteria in §60.32b of subpart Cb, and §62.14102 of subpart FFF. If you have any questions regarding the applicability of the direct final rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the amendment to the emission guidelines (40 CFR part 60, subpart Cb) and Federal plan (40 CFR part 62, subpart FFF) is OAR-2004-0007. Other dockets incorporated by reference include Docket ID Nos. A-89-08, A-90-45, and A-98-18 for the emission guidelines amendment and Docket ID Nos. A-97-45 and A-2000-39 for the Federal plan amendment. The docket includes background information and supported the proposal and promulgation of the emission guidelines (40 CFR part 60, subparts Ca and Ea) and large MWC Federal plan (40 CFR part 62, subpart FFF).

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule is

also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the promulgated direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at www.epa.gov/ttn/oarpg. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN Help line at (919) 541-5384.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by the final rule amendments is available on the filing of petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of the direct final rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's action may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements. Under section 307(d)(7) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment or public hearing may be raised for judicial review.

Outline. The information presented in this preamble is organize as follows:

- I. Background
- II. Statutory and Executive Order Reviews
 - A. Executive Order 12866, Regulatory Planning and Review
 - B. Paper Reduction Act
 - C. Regulatory Flexibility Act
 - D. Unfunded Mandates Reform Act
 - E. Executive Order 13132: Federalism
 - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
 - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
 - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
 - I. National Technology Transfer Advancement Act
 - J. Congressional Review Act

I. Background

The direct final rule amends the MWC emission guidelines and the MWC Federal plan for large MWC units to add a CO emission limit for bubbling fluidized bed combustors that burn a mixture of wood and refuse-derived fuel (RDF). This is the same combustor technology and CO emission limit that appear in the small MWC emission guidelines. In developing the emission guidelines for small MWC units, we recognized the unique characteristics of the existing bubbling fluidized bed MWC units combusting a mixture of wood and RDF and included a CO emission limit specific to that technology. Since promulgation of the emission guidelines for large MWC

units, two existing fluidized bed MWC units combusting a mixture of wood and RDF were determined to be large MWC units, subject to the large MWC emission guidelines. However, the large MWC emission guidelines did not include bubbling fluidized bed MWC units combusting a mixture of wood and RDF because none were judged to be in the large category when the large MWC emission guidelines were developed and adopted in 1995. The direct final rule amendments recognize bubbling fluidized bed (wood/RDF) MWC units as an MWC technology in the large MWC category and add a CO emission limit of 200 ppm by dry volume (24-hour geometric mean). This is the same CO emission limit, and is based on the same analysis for this technology, that appears in the small MWC emission guidelines. The direct final rule amendments similarly revise the large MWC Federal plan, which implements the emission guidelines.

II. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the

requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have determined that the direct final rule is not a "significant regulatory action" under the terms of Executive Order 12866, and, therefore, is not subject to review by OMB because the final rule will not have an annual effect on the economy of \$100 million or more and

does not impose any additional control requirements above the 1995 emission guidelines. We considered the 1995 emission guidelines to be "significant," and OMB reviewed them in 1995 (see 60 FR 65405, December 19, 1995).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The amendment contained in the direct final rule results in no changes to the information collection requirements of the standards or guidelines and will have no impact on the information collection estimate of project cost and hour burden made and approved by OMB during the development of the emission guidelines and Federal plan. Therefore, the information collection requests have not been revised. The Office of Management and Budget has previously approved the information collection requirements contained in the existing emission guidelines (40 CFR part 60, subpart Cb) and the Federal plan (40 CFR part 62, subpart FFF) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., at the time the rules were promulgated on December 1995 and November 1998, respectively. The Office of Management and Budget

assigned OMB control number 2060-0210 (EPA ICR 1506.07) to the emission guidelines and OMB control number 2060-0390 (EPA ICR 1847.01) to the Federal plan.

Copies of the ICR document(s) may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email at auby.susan@epa.gov, or by calling (202) 566-1672. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise

disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 601 et seq., generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small government organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as follows: (1) A small business in the regulated industry that has a gross annual revenue less than \$6 million; (2) a small governmental jurisdiction that is a

government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Section 605 of the RFA requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. During the 1995 MWC rulemaking, EPA estimated that few, if any, small entities would be affected by the promulgated guidelines and standards and, therefore, a regulatory flexibility analysis was not required (see 60 FR 65413).

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The direct final rule will not impose any requirements on small entities because it does not impose any additional regulatory requirements.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, Public Law 104-4, establishes requirements for

Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments,

including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Thus, the final rule is not subject to the requirements of section 202 and 205 of the UMRA. In addition, we have determined that the direct final rule contains no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulation does not unfairly apply to small governments. Therefore, the direct final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, we may not issue a regulation that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. Also, we may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

The direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The direct final rule will not impose substantial direct compliance costs on State or local governments, it will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The direct final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the direct final rule.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives we considered.

We interpret Executive Order 13045 as applying only

to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health and safety risks. Also, the direct final rule is not "economically significant."

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use

The direct final rule is not subject to Executive Order 13211 (66 FR 43255, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, §12(d)(15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., material specifications, test methods, sampling procedures, business practices)

developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not use available and applicable voluntary consensus standards.

The direct final rule does not involve technical standards. Therefore, the requirements of the NTTAA do not apply.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. We will submit a report containing the direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

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List of Subjects in 40 CFR Parts 60 and 62

Environmental protection, Administrative practice
and Procedure, Air pollution control, Intergovernmental
relations, Reporting and recordkeeping requirements.

Dated:

Michael O. Leavitt,
Administrator

For reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations is amended as follows:

PART 60--[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Cb--[AMENDED]

2. Amend §60.34b by revising Table 3 - Municipal Waste Combustor Operating Guidelines to read as follows:

§60.34b Emission guidelines for municipal waste combustor operating practices.

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TABLE 3. MUNICIPAL WASTE COMBUSTOR OPERATING GUIDELINES

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) ^a	Averaging time (hrs) ^b
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4

Refuse-derived fuel stoker	200	24
Fluidized bed, mixed fuel (wood/refuse-derived fuel)	200	24 ^c
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse- derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse- derived fuel mixes fuel-fired combustor	200	24

- a Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.
- b Averaging times are 4-hour or 24-hour block averages.
- c 24-hour block average, geometric mean.

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PART 62--[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7671*q*.

2. Amend subpart FFF by revising Table 3 to read as follows:

Subpart FFF--[AMENDED]

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TABLE 3 of SUBPART FFF OF PART 62 -- MUNICIPAL WASTE
COMBUSTOR OPERATING REQUIREMENTS

Municipal waste combustor technology	Carbon monoxide emissions level (parts per million by volume) ^a	Averaging time (hrs) ^b
Mass burn waterwall	100	4
Mass burn refractory	100	4
Mass burn rotary refractory	100	24
Mass burn rotary waterwall	250	24
Modular starved air	50	4
Modular excess air	50	4
Refuse-derived fuel stoker	200	24
Fluidized bed, mixed fuel (wood/refuse-derived fuel)	200	24 ^c
Bubbling fluidized bed combustor	100	4
Circulating fluidized bed combustor	100	4
Pulverized coal/refuse-derived fuel mixed fuel-fired combustor	150	4
Spreader stoker coal/refuse-derived fuel mixed fuel-fired combustor	200	24

^a Measured at the combustor outlet in conjunction with a measurement of oxygen concentration, corrected to 7 percent oxygen, dry basis. Calculated as an arithmetic average.

^b Averaging times are 4-hour or 24-hour block averages.

^c 24-hour block average, geometric mean.

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